

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

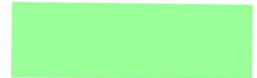


U.S. Citizenship
and Immigration
Services



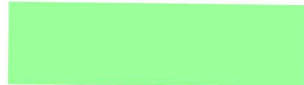
DATE: JUN 27 2013 OFFICE: NEBRASKA SERVICE CENTER

FILE:



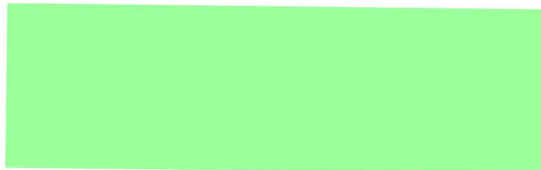
IN RE:

Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner describes itself as an IPTV and web media services and software development business. It seeks to permanently employ the beneficiary in the United States as a lead developer. The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2) as a member of the professions holding an advanced degree. The petition is accompanied by an ETA Form 9089 Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is July 17, 2009, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The director determined that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2) provides for the granting of preference classification to qualified immigrants who hold an advanced degree. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2).

Upon review of the entire record, including evidence submitted on appeal, the AAO is persuaded that the petitioner has established that that the beneficiary had all the education, training, and experience specified on the ETA 9089, as of the priority date. Additionally, the AAO finds that the evidence submitted establishes that the petitioner more likely than not, had the continuing ability to pay the beneficiary the proffered wage from the priority date onward. Accordingly, the petition is approved under section 203(b)(2) or the Act, 8 U.S.C. § 1153(b)(2).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained and the petition is approved.